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FIRST GENERAL COUNSEL'S REPORT

MUR 6040

DATE COMPLAINT FILED: 7/14/08

DATE OF NOTIFICATION: 7/18/08 &
10/24/08

LAST RESPONSE RECEIVED: 11/17/08

DATE ACTIVATED: 11/10/08

EXPIRATION OF SOL: 11/1/01 - 9/30/13

COMPLAINANT:

Kenneth F. Boehm, Chairman
National Legal and Policy Center

RESPONDENTS:

Representative Charles B. Rangel
Rangel for Congress and Basil Paterson, in
his official capacity as treasurer
National Leadership PAC and Basil
Paterson, in his official capacity as
treasurer
The Olnick Organization, Inc.
Fourth Lenox Terrace Associates a/k/a
Lenox Terrace Development Assoc.

RELEVANT STATUTES:
AND REGULATIONS

2 U.S.C. § 434(b)
2 U.S.C. § 441a(a)(1)(A) and (C)
2 U.S.C. § 441a(f)
2 U.S.C. § 441b(a)
11 C.F.R. § 100.52(d)(1) and (2)
11 C.F.R. § 104.3
11 C.F.R. § 110.1(b)(1) and (e)
11 C.F.R. § 114.1

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

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I. INTRODUCTION

This matter arises from a complaint alleging that the Olnick Organization, Inc. ("Olnick, Inc.") made prohibited in-kind corporate contributions to Representative Charles B. Rangel's congressional campaign committee, Rangel for Congress ("RFC"), and his leadership committee, the National Leadership PAC ("the NLP") (collectively "the Committees"), in violation of the Federal Election Campaign Act of 1971, as amended ("the Act"). See 2 U.S.C. § 441b(a). Specifically, the complaint asserts that, over a ten year period, Olnick, Inc. provided office space in Harlem's Lenox Terrace apartment complex to the Committees at a substantial discount resulting in prohibited in-kind contributions. 2 U.S.C. § 441b(a); 11 C.F.R. §§ 114.1 and 100.52(d)(1). The complaint also alleges that the Committees failed to report these in-kind contributions. 2 U.S.C. § 434(b). Finally, although the complaint does not allege specific violations against him, Representative Rangel is also named as a respondent.

Respondents Olnick, Inc., Fourth Lenox Terrace Associates a/k/a Lenox Terrace Development Assoc., the owner of the rent-stabilized apartment at issue ("Fourth Lenox"), RFC and the NLP, submitted responses in which they deny violating the Act. Representative Rangel did not submit a separate formal response but, a week after the complaint was filed, sent a letter directly to the Commission requesting that the Commission "examine" his rental and subsequent sublease to the Committees. Letter of Representative Rangel to Chairman Donald McGahn, dated July 21, 2008 (hereinafter

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1 "Rangel Letter"). According to the letter, the request was meant as an invitation to
2 internally generate an examination of this matter pursuant to Directive 6.¹

3 As discussed more fully below, the evidence suggests that Fourth Lenox may
4 have made excessive in-kind contributions to RFC and the NLP, which RFC and the NLP
5 failed to report. 2 U.S.C. § 441a(a)(1)(A) and (C); 2 U.S.C. § 434(b). Accordingly, we
6 recommend that the Commission make reason to believe findings as detailed in this
7 report and authorize an investigation regarding the circumstances surrounding the lease
8 of the rent-stabilized apartment at issue in this matter.

9 **II. FACTUAL SUMMARY**

10 Representative Rangel represents the 15th Congressional District in New York and
11 RFC is his principal campaign committee. His leadership political action committee, the
12 NLP, is registered with the Commission as a non-connected PAC and multicandidate
13 committee. 11 C.F.R. § 100.5(g)(5); see Leadership PACs, 68 Fed. Reg. 67,013 (Dec. 1,
14 2003).

15 The rent-stabilized apartment at issue in this matter is located at 40 West 135th
16 Street in New York City in a building owned by Fourth Lenox. Fourth Lenox Response,
17 dated November 14, 2008, at note 2; Olmick, Inc. Response, dated September 5, 2008, at
18 2 and Exhibit 2. Fourth Lenox's apartment building is part of a six building complex

¹ Directive 6 outlines procedures for handling internally generated compliance matters. According to Directive 6, internally generated matters may arise out of referrals from different divisions within the agency, referrals from other agencies, public government documents, commission-authorized non-routine review of reports and documents, as well as, news articles and similar published sources. See Directive 6, *Handling of Internally Generated Matters*, dated April 21, 1978.

1 called Lenox Terrace. *Id.* Lenox Terrace was built in 1958 by Robert S. Olnick, the late
2 president of Olnick, Inc. Complaint at Exhibit A (David Kocieniewski, *For Rangel, Four*
3 *Rent-Stabilized Apartments*, THE NEW YORK TIMES, July 11, 2008);
4 <http://www.olnick.com>. Each of the six buildings that make up Lenox Terrace, including
5 Fourth Lenox, are currently owned by separate general partnerships.² Fourth Lenox
6 Response, dated November 14, 2008, at note 2. The general partnership that owns Fourth
7 Lenox has ~~seventeen~~ general partners, sixteen of whom are individuals or trusts. *Id.* at
8 note 19. The seventeenth general partner is a limited liability company that elects to be
9 treated as a partnership for tax purposes. *Id.*

10 Olnick, Inc., a New York corporation that develops residential, commercial and
11 hotel properties, provides the following services to the Lenox Terrace complex:
12 advertising rentals, accepting and processing residential lease applications, and providing
13 property management services. Fourth Lenox Response, dated November 14, 2008, at
14 Exhibit 1; www.olnick.com/residential/rent and www.olnick.com/management.

15 During the relevant time period, Representative Rangel and his wife leased four
16 rent-stabilized apartments in Fourth Lenox's apartment building at 40 West 135th Street.
17 In 1988, Representative Rangel signed a two-year lease for a previously combined
18 rent-stabilized apartment [redacted]. In 1997, Representative Rangel signed a two-
19 year lease for an adjacent rent-stabilized apartment [redacted]. Representative Rangel
20 and his family have continuously resided in these apartments since signing the original

² Mr. Olnick, as president of the Fourth Lenox Terrace Corporation, sold the building at issue in this matter to Fourth Lenox on December 31, 1967. Olnick, Inc. Response at Exhibit 2.

1 leases, which have been renewed at the expiration of each prior lease. Fourth Lenox
2 Response, dated November 14, 2008, at 3.

3 In July of 1996, the tenant living in Unit 10U of the building in which
4 Representative Rangel resides vacated the rent-stabilized one bedroom apartment. Fourth
5 Lenox Response, dated November 14, 2008, at 3. On October 16, 1996, Representative
6 Rangel signed a two-year lease to rent Unit 10U from November 1, 1996 until October
7 31, 1998 for \$498.87 per month. *Id.* at Exhibit 3. In pertinent part, the lease states "[y]ou
8 shall use the apartment for living purposes only." *Id.* The lease also barred the tenant
9 from subletting Unit 10U without the landlord's "advance written consent."³ *Id.*
10 Thereafter, Representative Rangel signed two-year Renewal Lease Forms for Unit 10U in
11 1998, 2000, 2002, 2004 and 2006. *Id.* The rent for Unit 10U increased with each lease
12 renewal and by the 2006-2008 lease renewal period it was \$677.34 per month. *Id.*

13 According to Representative Rangel, he subleased Unit 10U to RFC and the NLP.
14 Rangel Letter. The available information indicates that RFC started paying rent directly
15 to Fourth Lenox in December 1996. RFC's 1996 Year End Report indicates that, on
16 December 3, 1996, the Committee paid "office rent" to Fourth Lenox in the amount of
17 \$166.73 per month and, on December 5, 1996, it reimbursed Representative Rangel
18 \$1,000 for "office rent" paid to Fourth Lenox. It appears that the NLP began splitting the
19 rent for Unit 10U with RFC in November 1998. According to the NLP's 1998 30 Day
20 Post-Election Report, the Committee made its first disbursement to Fourth Lenox on

³ Pursuant to section 226-b of New York's Real Property Law, rent-stabilized tenants have the right to sublet their apartments provided the owner is notified by certified mail. The owner is then required to respond to the tenant's request to sublet within thirty days. Tenants who do not comply with the requirements of section 226-b may be subject to eviction proceedings. 9 NYCRR § 2525.6.

1 November 12, 1998. *See also* Fourth Lenox Supplemental Response, dated December
2 23, 2008, at Exhibit A.

3 Representative Rangel continued to lease Unit 10U until the 2006 lease expired
4 on October 31, 2008. Fourth Lenox Response, dated November 14, 2008, at 3.
5 According to the Statement of Candidacy filed on March 31, 2009, the Committee moved
6 to 193 Lenox Avenue, New York. The NLP continued to report a Post Office Box in
7 New York City as its address. Disclosure reports for both RFC and the NLP indicate that
8 in October 2008 the Committees each began paying a monthly rent of \$2,000 to Wicklow
9 Properties, LLC.

10 The complaint alleges that RFC and the NLP occupied Unit 10U at a greatly
11 reduced rent in violation of New York's Rent Stabilization Code ("Code").⁴ Complaint
12 at 3 and 4. In support of its allegation, the complaint references an attached newspaper
13 article that ran in the July 11, 2008 issue of the NEW YORK TIMES. David Kocieniewski,
14 *For Rangel, Four Rent-Stabilized Apartments*, NEW YORK TIMES, July 11, 2008
15 (hereinafter "Complaint Exhibit A"). The article asserts that Representative Rangel used
16 Unit 10U "as a campaign office, despite state and city regulations that require rent-
17 stabilized apartments to be used as a primary residence" and that state and city rent
18 regulations permit renewals of rent-stabilized apartments "as long as the [tenants] use it
19 as a primary residence." Complaint at 2; Complaint Exhibit A at 10 and 12. According
20 to this article, Representative Rangel and his Committees made use of the office space
21 even while "the Olnick Organization and other real estate firms have been accused of

⁴ The complaint alleges that Fourth Lenox was legally precluded under the Code from leasing Unit 10U to Representative Rangel because the apartment was not his primary residence. We do not address the legality of Fourth Lenox's rental of Unit 10U to Representative Rangel because New York property law is not within the Commission's jurisdiction.

1 overzealous tactics as they move to evict tenants from their rent-stabilized apartments and
2 convert them to market-rate housing.” *Id.* at 10. The article reports that state officials
3 and city housing experts “knew of no one else with four” rent-stabilized apartments.
4 Complaint Exhibit A at 11. The article also states that the Committees paid \$630 for Unit
5 10U while one-bedroom apartments in the same development “are now rented for \$1,865
6 and up.” *Id.* at 14. The complaint also highlights the article’s statements that one of the
7 owners of Olnick Inc. contributed to both committees in 2004, and further contributed to
8 the NLP in 2006, and the complaint also asserts that city records show that in 2005 a
9 lobbyist from the Olnick organization met with Rangel regarding government approval of
10 a plan to expand Lenox Terrace.⁵ *Id.* at 6 and Complaint Exhibit A at 4.

11 Based on the above information, the NEW YORK TIMES article suggests that the
12 rental arrangement between the landlord, Representative Rangel and by extension his
13 Committees, “could be considered a gift because it is given at the discretion of the
14 landlord and it is not generally available to the public.” Complaint Exhibit A at 14.
15 Therefore, the complaint alleges that Olnick, Inc. made prohibited corporate in-kind
16 contributions totaling tens of thousands of dollars by renting Unit 10U to the Committees
17 at a rate significantly below market value. 2 U.S.C. § 441b(a) and 11 C.F.R.
18 § 100.52(d)(1).

19 Further, the complaint alleges that RFC and the NLP violated the Act by
20 accepting, and failing to report, prohibited in-kind contributions in the form of reduced

⁵ Sylvia Olnick, who is an owner of Olnick, Inc. contributed \$2,000 to RFC in 2004 and \$2,500 to NLP in 2004 and 2006. Complaint Exhibit A. Fourth Lenox identified three Fourth Lenox partners who also contributed to the Committees. Nancy Olnick Spanu contributed \$1,000 to the NLP in 2006. Fourth Lenox partner Alison Lane Rubler contributed \$1,000 to RFC in 2005 and Fourth Lenox partner Meredith Lane Verona contributed \$1,000 to RFC in 2005 and \$500 to the NLP in 2006. Fourth Lenox Response, dated November 14, 2008, at note 21.

1 rent. 2 U.S.C. §§ 434(b), 441b(a) and 441a(f); *see also* 11 C.F.R. § 104.3.
2 Representative Rangel is named as an individual respondent, although the complaint does
3 not specify how he violated the Act beyond stating that he benefited from the discounted
4 rent given to the Committees.

5 Both Olnick, Inc. and Fourth Lenox identify Fourth Lenox as the owner of the
6 property at issue in this matter.⁶ In its response, Fourth Lenox denies that leasing a
7 rent-stabilized apartment to Representative Rangel resulted in its making in-kind
8 contributions to RFC or the NLP. Fourth Lenox Response, dated November 14, 2008, at
9 6. Fourth Lenox asserts that it is not legally prohibited from leasing Unit 10U to
10 Representative Rangel because the apartment was not his primary residence. *Id.*
11 According to Fourth Lenox, a tenant that is not an individual or does not use the
12 rent-stabilized apartment as a primary residence is not necessarily subject to eviction, nor
13 is the apartment automatically "destabilized."⁷ Instead, the landlord "has the option" of
14 not renewing the lease if the landlord can establish that the tenant does not meet those
15 two requirements. *Id.* Fourth Lenox states that the Code does not prevent landlords from
16 leasing a rent-stabilized apartment (or renewing that lease) to a "non-compliant" tenant,
17 "such as a corporate entity or a political committee." *Id.*

18 Nevertheless, Fourth Lenox states that it did not consent to the sublease and
19 denies that its management knew the Committees were operating out of Unit 10U until

⁶ Except for a few exhibits, the responses provided by Olnick, Inc. and Fourth Lenox are virtually identical. For convenience we will cite to Fourth Lenox's response, dated November 14, 2008, unless we are referring to unique information contained in Olnick, Inc.'s Response, dated September 5, 2008.

⁷ Pursuant to the Code, a tenant is entitled to rent protection and automatic renewal of his or her lease provided they satisfy two requirements - that they are individuals and they use the apartment as a primary residence. 9 NYCRR §§ 2520.6(u) and 2520.1 i(k).

1 June or July of 2008.⁸ Fourth Lenox Supplemental Response, dated December 23, 2008,
2 at 2. Fourth Lenox explains that its management never saw RFC's and the NLP's rent
3 checks because, in accordance with company policy, tenants sent their rent checks to a
4 "lock box" instead of the company. *Id.* at 2. According to Fourth Lenox, rent checks
5 were taken from the "lock box" and deposited directly into a bank account. *Id.*

6 Fourth Lenox also contends that the rental of 10U to Representative Rangel does
7 not constitute an illegal in-kind contribution to RFC and the NLP because Representative
8 Rangel was charged the maximum rent permitted by law for rent-stabilized apartments.
9 Fourth Lenox Response, dated November 14, 2008, at 7. According to Fourth Lenox, the
10 rent charged Representative Rangel was first established and then increased with each
11 lease renewal in accordance with the Rent Guidelines Board's annual orders.⁹ *Id.* at 4.
12 Fourth Lenox states that its main concern is to "fill the apartments in the building and
13 earn money from rentals" and there was no economic incentive for it to reject a reliable
14 tenant like Representative Rangel, given the vacancy rate in Lenox Terrace and the fact

⁸ Representative Rangel's chief of staff is reported to have said that the landlord knew the apartment was being used as a campaign office. Sewell Chan, *Rangel Defends Use of Rent-Stabilized Apartments*, THE NEW YORK TIMES, July 11, 2008, <http://cityroom.blogs.nytimes.com/rangel>.

⁹ The rent charged for a rent-stabilized apartment must be in accordance with the Rent Guidelines Board's ("RGB") annual orders, which caps the percentage by which a landlord may raise rent each year. Fourth Lenox Response, dated November 14, 2008, at 4 and 5; see also <http://www.housingnyc.com/html/about/nrcr/oc/tl.html>. The maximum amount of rent that a landlord may charge for a rent-stabilized apartment must be based on the amount paid the previous year adjusted by the percentage increase dictated by the RGB. *Id.* In addition to the percentage increase dictated by the RGB, a landlord may increase the rent when a rent-stabilized tenant vacates and also when renovations are made to the apartment. *Id.*

1 that Unit 10U could not be deregulated.¹⁰ *Id.* at 7 and note 14. The respondent also
2 states that neither Representative Rangel nor the Committees were treated differently
3 than "any other tenant who would have rented apartment 10U or will rent the apartment
4 in the future." *Id.* at 8.

5 RFC and the NLP deny receiving impermissible contributions in the form of
6 reduced rent for Unit 10U. These respondents contend that "the landlord charged and the
7 committees paid the maximum rent as dictated by law for the apartment." Committees'
8 Response, dated September 5, 2008, at 1. Representative Rangel denies that he received
9 a discount on rent when he entered into the lease for Unit 10U. Rangel Letter at 1. The
10 Representative states that he rented Unit 10U under the same terms as other tenants in the
11 building and was charged the maximum legal rent, including rent increases and all capital
12 costs. Representative Rangel also asserts that he subleased the apartment to his
13 Committees for the same rent as he was charged. *Id.*

14 **III. LEGAL ANALYSIS**

15 At issue in this matter is whether Fourth Lenox made excessive and/or prohibited
16 unreported in-kind contributions to RFC and the NLP in the form of reduced rent for their
17 office space. The Act prohibits any corporation from making a contribution to a political
18 committee and similarly prohibits political committees from accepting or receiving such
19 contributions. 2 U.S.C. § 441b(a). The Act also provides that no person shall make

¹⁰ Because Lenox Terrace was built in 1958, all the apartments in the six building complex were originally subject to rent-stabilization. Over time some of these apartments have been deregulated and are no longer subject to the Code. Rent-stabilized apartments may only be deregulated if the monthly rent exceeds \$2,000 or more and the tenant vacates, if the rent increases above \$2,000 with the 20% vacancy adjustment, or if the rent increases to more than \$2,000 during an active tenancy and the landlord can establish the tenant's income for the previous two years exceeded \$175,000. Fourth Lenox Response, dated November 14, 2008, at 5, *citing* N.Y. UNCONSOL. LAW § 26-504.1; 9 NYCRR § 2531.3. Once a rent-stabilized apartment is deregulated, it may be leased at any rate.

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1 contributions to any candidate and his or her authorized political committees with respect
2 to any election for federal office which in the aggregate exceed \$2,300. 2 U.S.C.

3 § 441a(a)(1)(A). Further, no person shall make contributions to any other political
4 committee in any calendar year, which in the aggregate, exceeds \$5,000. 2 U.S.C.

5 § 441a(a)(1)(C). Contributions received by a candidate's committee from a partnership
6 may not exceed \$2,300 per election. A contribution from a partnership also counts
7 proportionately against each contributing partner's \$2,300 limit for the same candidate.

8 11 C.F.R. § 110.1(b)(1) and (e). Contributions received by non-connected committees
9 from a partnership may not exceed \$5,000 per calendar year. A contribution from a
10 partnership also counts proportionately against each contributing partner's \$5,000 limit
11 for the same committee. 11 C.F.R. § 110.1(d) and (e).

12 Candidates and political committees may not accept contributions which exceed
13 the statutory limitations of section 441a. 2 U.S.C. § 441a(f). All political committees are
14 required to file reports of their receipts and disbursements. 2 U.S.C. § 434(a). These
15 reports must itemize all contributions received from individuals that aggregate in excess
16 of \$200 per election cycle. 2 U.S.C. § 434(b); 11 C.F.R. § 104.3(a)(4). Any in-kind
17 contribution must also be reported as an expenditure on the same report. 11 C.F.R.
18 §§ 104.3(b) and 104.13(a)(2).

19 A "contribution" includes "any gift, subscription, loan, advance, or deposit of
20 money or anything of value made by any person for the purpose of influencing any
21 election for federal office." 2 U.S.C. § 431(8)(A)(i). The Commission's regulations
22 provide that "anything of value" includes all in-kind contributions, including the
23 provision of goods or services without charge or at a charge which is less than the usual

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1 and normal charge for such goods or services. 11 C.F.R. § 100.52(d)(1). The regulations
2 specifically include facilities as an example of such goods or services. *Id.* The amount of
3 the in-kind contribution is the difference between the usual and normal charge for the
4 goods or services at the time of the contribution and the amount charged to the political
5 committee. *Id.* The usual and normal charge for goods means the price of those goods in
6 the market from which they ordinarily would have been purchased at the time of the
7 contribution. 11 C.F.R. § 100.52(d)(2).

8 In the past, the Commission has determined that the purchase of goods or services
9 at a discount does not result in a contribution when the discounted items are made
10 available in the ordinary course of business and on the same terms and conditions to the
11 vendor's other customers who are not political committees. *See* Advisory Opinion 2006
12 (Pac For a Change); *see also* Advisory Opinion 2004-18 (Lieberman), Advisory Opinions
13 2001-08 (Specter), Advisory Opinion 1994-10 (Franklin National Bank). However, the
14 Commission has determined that a contribution is made where a political committee is
15 given preferential treatment different from other customers, or the treatment is outside of
16 a business relationship. *See* Advisory Opinion 1994-10 (Franklin National Bank) at note
17 4, *citing* 1991-23 (Retail Druggists)(proposed donation of a car), Advisory Opinion 1987-
18 22 (Willard and Arnold)(proposed donation of poll results) and Advisory Opinion 1986-
19 30 (Martin)(proposed free use of a houseboat).

20 Fourth Lenox concedes that providing facilities, such as an apartment, to a
21 political committee at less than the usual rate can be deemed a contribution, but contends
22 that, not only was Representative Rangel charged the maximum allowable rent, he and
23 the Committees were "treated no differently than any other tenant who would have rented

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1 Unit 10U." Fourth Lenox Response, dated November 14, 2008, at 8. Fourth Lenox
2 asserts that, while the Code protects tenants by controlling rent increases and insuring
3 continuation of their automatic lease renewal rights, landlords of rent-stabilized
4 properties, like Fourth Lenox, retain a great deal of flexibility with regard to who
5 becomes and remains a tenant. Fourth Lenox Response, dated November 14, 2008, at 6.
6 For instance, Fourth Lenox states that landlords are not under an affirmative obligation to
7 refuse to renew a rent-stabilized lease for a tenant who fails to satisfy the primary
8 residency requirement under the Code. *Id.* In addition, Fourth Lenox argues that while
9 the protections of the Code do not apply to housing accommodations used exclusively for
10 professional, commercial, or other non-residential purposes, landlords are not barred
11 from leasing rent-stabilized properties to entities such as businesses or political
12 committees. *Id.*

13 In this matter, the available information provides several indications that
14 Representative Rangel's lease of Unit 10U may have been the result of preferential
15 treatment. For example, the lease for Unit 10U states specifically that the unit shall be
16 used for living purposes only and that it could not be sublet without the landlord's
17 advance written consent. Fourth Lenox Response, dated November 14, 2008, at Exhibit
18 3. However, Representative Rangel did not adhere to either of these provisions but was
19 not evicted. For its part, Fourth Lenox claims ignorance regarding the fact that the
20 Committees were using Unit 10U as a "campaign office." Fourth Lenox Supplemental
21 Response, dated December 23, 2008, at 2. Yet, as discussed *supra* at 5, each Committee

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1 paid Fourth Lenox directly with checks from their own accounts.¹¹ *Id.* at Exhibit A.
2 Fourth Lenox states that its management never looks at the rent checks because they are
3 sent straight to a lock box and then directly deposited into their account. *Id.* However,
4 there is available information suggesting that Fourth Lenox's agents may be performing
5 some kind of review of the rent checks. Specifically, Fourth Lenox's management
6 company, Olnick, Inc., reportedly refused to accept rent checks from one long-time
7 tenant and threatened to evict him from his rent-stabilized apartment for "non-payment"
8 because his daughter, whose name was not on the lease, signed his rent checks. David
9 Kocieniewski, *Rangel's Neighbors See a Rent Double Standard*, THE NEW YORK TIMES,
10 July 17, 2008 (hereinafter "July 17th NEW YORK TIMES Article"). In addition, the fact
11 that Representative Rangel's other three units in the building were adjacent units on a
12 single floor raises the question of how Fourth Lenox and/or Olnick, Inc. could have
13 thought the unit six floors below was part of Representative Rangel's residence.
14 Further, according to information provided by the complainant, Fourth Lenox's
15 agent, Olnick, Inc. has been "accused of overzealous tactics as they move to evict tenants
16 from their rent-stabilized apartments and convert the units into market-rate housing."
17 Complaint Exhibit A at 10. Among the potential bases for evicting a tenant from a rent-
18 stabilized unit, or not renewing a lease, include an illegal sublet, the use of multiple
19 rent-stabilized apartments, or use of the unit for purposes other than as a primary
20 residence. Fourth Lenox could have used any of the bases outlined above to remove

¹¹ Further, Rangel's own chief of staff is reported to have publicly said that the landlords knew that that was the case. See note 8 *supra* at 9. Although not attached to the complaint, subsequent reporting by the NEW YORK TIMES and others suggests that Lenox Terrace officials scrutinize tenants closely for compliance with the rent-control laws. David Kocieniewski, *Rangel's Neighbors See a Rent Double Standard*, THE NEW YORK TIMES, July 17, 2008; Amy Westfeldt, *Rangel: Not Unfair to Have 4 Rent-Stabilized Apartments*, THE SUN, February 4, 2009.

1 Representative Rangel and the Committees from Unit 10U, but did not. For other
2 tenants, however, Fourth Lenox and other landlords have instituted eviction proceedings
3 on a variety of grounds, including the failure to maintain a rent-stabilized apartment as a
4 primary residence. See *In the Matter of Park West Village v Lewis*, 62 N.Y.2d 431
5 (1984) (involving the use of a residential unit for a psychotherapy practice); *Third Lenox*
6 *Terrace Associates v. Stephanie Francis*, 14 Misc. 3d 139(A), 836 N.Y.S.2d 504 (Table)
7 (2007) (eviction from rent-controlled unit upheld because the unit was not maintained as
8 primary residence); *Fourth Lenox Terrace Assoc. v. Wilson*, 15 Misc.3d 113, 838
9 N.Y.S.2d 332 (2007) (successor rights to rent-stabilized unit upheld in part because
10 appellant primarily resided in unit on a continuous basis and shared a "simultaneous
11 tenancy" with tenant prior to her death as required under the regulations).

12 Finally, information attached to the complaint suggests that any such preferential
13 treatment accorded to Representative Rangel in connection with the lease of Unit 10U
14 was different from that of other customers, or was outside of a business relationship. See
15 Advisory Opinion 1994-10 (Franklin National Bank). As discussed *supra* at 7, the
16 complaint alleges that one of the co-owners of Olnick, Inc. made contributions to both
17 Committees in 2004, and further contributed to NLP in 2006, and the complaint asserts
18 that city records show that in 2005 a lobbyist from Olnick, Inc. met with Representative
19 Rangel regarding government approval of a plan to expand Lenox Terrace. And, at least
20 one other newspaper article suggests that the owners of Lenox Terrace routinely decline
21 to take action against "prominent or politically connected" tenants, like Representative
22 Rangel, who fail to comply with the regulations. July 17th NEW YORK TIMES Article.
23 Therefore, there appears to be sufficient information to suggest that Fourth Lenox treated

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1 Representative Rangel and RFC and the NLP differently than other tenants that were not
2 political committees.

3 As a result, it appears that the Committees may have had access to a rent-
4 stabilized apartment for which they paid less than they would have for non-rent-stabilized
5 office space.¹² Because it appears that Fourth Lenox may have given Representative
6 Rangel and the Committees preferential treatment with respect to the lease on rent-
7 stabilized Unit 10U, there is reason to believe that Fourth Lenox made excessive in-kind
8 contributions to RFC and the NLP, which the Committees failed to report.¹³ However,
9 we do not have enough information at this time to determine whether Olnick, Inc. also
10 has any potential liability in this matter. Accordingly, we recommend that the
11 Commission find reason to believe that Fourth Lenox Terrace Associates a/k/a Lenox
12 Terrace Development Assoc. violated 2 U.S.C. § 441a(a)(1)(A) and (C); find reason to
13 believe that Rangel for Congress and Basil Paterson, in his official capacity as treasurer,
14 violated 2 U.S.C. §§ 434(b) and 441a(f); find reason to believe the National Leadership
15 PAC and Basil Paterson, in his official capacity as treasurer, violated 2 U.S.C. §§ 434(b)
16 and 441a(f); take no action at this time with respect to the Olnick Organization, Inc.; and
17 take no action at this time with respect to Representative Charles B. Rangel.

¹² As noted *supra* at 6, disclosure reports filed by RFC and the NLP indicate that the Committees are currently paying a total of \$4,000 per month for office space. When the Committees vacated Unit 10U in the fall of 2008 they were paying a total of \$677.24 per month for a one-bedroom apartment, which was significantly less than the \$1,865 per month and up charged for market-rate one-bedroom apartments in Lenox Terrace. Complaint at Exhibit A; <http://www.olnick.com>.

¹³ Further, as Fourth Lenox is a partnership, it appears that any in-kind contributions resulting from reduced rent on Unit 10U would result in excessive contributions from individual partners as well. 11 C.F.R. § 119.1(h)(1) and (e) and 11 C.F.R. § 119.1(d) and (e). Although we do not know the identities of all the individual partners apart from the four cited by Fourth Lenox in its response, we intend to clarify this issue during the investigation. Fourth Lenox Response, dated November 14, 2008 at notes 19 and 21.

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1 **IV. INVESTIGATION**

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20 **Accordingly, this Office requests that the Commission authorize the use of**
21 **compulsory process in this matter, including the issuance of appropriate interrogatories,**
22 **document subpoenas, and deposition subpoenas, as necessary.**

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V. RECOMMENDATIONS

1. Find reason to believe that Fourth Lenox Terrace Associates a/k/a Lenox Terrace Development Assoc. violated 2 U.S.C. § 441a(a)(1)(A) and (C).
2. Find reason to believe that Rangel for Congress and Basil Peterson, in his official capacity as treasurer, violated 2 U.S.C. §§ 434(b) and 441a(f).
3. Find reason to believe that the National Leadership PAC and Basil Peterson, in his official capacity as treasurer, violated 2 U.S.C. §§ 434(b) and 441a(f).
4. Take no action at this time with respect to the Olnick Organization, Inc.
5. Take no action at this time with respect to Representative Charles B. Rangel.
6. Authorize the attached Factual and Legal Analyses.
7. Authorize the use of compulsory process.
8. Approve the appropriate letters.

Thomasenia P. Duncan
General Counsel

Date

11-30-09

BY:

KLG
Kathleen Guith
Deputy Associate General Counsel
for Enforcement

PB
Peter Blumberg
Assistant General Counsel

Marianne Abely
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Attorney

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